IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE FIFTEENTH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO : 11903 of 2005

Between:

1 M.Rohit Reddy, s/o M.Mohan Reddy,
r/o H.No.8-2-334/30, Road No.3, Banjara Hills, Hyderabad.
2 M.Pratima Reddy, w/o M.Mohan Reddy,
r/o H.No.8-2-334/30, Road No.3, Banjara Hills, Hyderabad.
3 M.Nitya Reddy, d/o M.Mohan Reddy
r/o H.No.8-2-334/30, Road No.3, Bajara Hills, Hyderabad.

..... PETITIONER(S)

AND

1 The Deputy Registrar of Co.op.Societies/Arbitrator Vasavi Cooperative Urban Bank Limited, Hyderabad.
2 The Vasavi Co.operative Urban Bank Ltd., bearing Registration No.T.A.1186, office at 16-2-705/9/11, Malakpet,
Hyderabad rep., by its Managing Director V.Rohini Kumar, s/o V.Vithal Rao, aged about 47 years,
r/o Sikh Village, Secunderabad.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction particularly one in the nature of writ of certiorari calling for the records relating to the impugned order in I.A.No.1 of 2005 in ARC No.222 of 2002 dated 27-5-2005 passed by the 1st respondent and quash the same by further directing the respondent No.1 to permit the petitioner to cross examine the PW.1 and to pass such other order or further order may be deemed fit and proper in the interest of justice.

Counsel for the Petitioner: MR.S.LAKSHMA REDDY

Counsel for the Respondent No.1: GP FOR COOPERATION

Counsel for respondent No.2: Mr.A.Ashok Anand Kumar

The Court at the admission stage made the following :

ORAL ORDER:

The petitioners herein filed the present writ petition being aggrieved by order of the Deputy Registrar of Cooperative Societies/Arbitrator, Vasavi Cooperative Urban Bank Limited, Hyderabad in dismissing their application in I.A.No.1 of 2005 in ARC NO.222 of 2002 forfeiting the right of petitioners to cross-examine P.W.1.

The Second respondent Vasavi Cooperative Urban Bank Limited filed ARC No.222 of 2002 against the petitioners herein for recovery of Rs.1,07,50,093/- and during pendency of these proceedings, the first petitioner's father is said to have expired on 6-4-2005. It is the case of the petitioners that since they were mourning their father's death they could not go out of their house to give instructions to their counsel and that the first respondent called the case and forfeited their right of cross-examining P.W.1 on 28-4-2005. The application filed by the petitioners in I.A.No.1 of 2005 to set aside the said order and to give them opportunity to cross examine P.W.1 was dismissed by order dated 27-5-2005.

Sri Ashok Anand Kumar, learned counsel appearing for the 2nd respondent draws my attention to paragraphs 4 and 5 of counter affidavit filed by the Managing Director of the 2nd respondent Bank in I.A.No.1 of 2005 in ARC No.222 of 2002. Paragraphs 4 and 5 of the said counter affidavit read thus:

"In reply to para 2 of the affidavit, it is submitted that it is true that this Respondent Bank filed the ARC for the recovery of a sum of Rs.1,07,50,093/- as on 31-12-2001 together with interest. It is true that firstly Sri Ravinder Lal, the then Branch Manager of this Respondent Bank filed his Chief Affidavit. As Sri Ravinder Lal was suspended from service and Ms.Saritha mathur, who was transferred in place of Sri Ravinder Lal filed her affidavit in lieu of Chief Examination. It is denied that she did not attend the Court. The case was adjourned several times on the request of the petitioner's counsel. On 16-01-2005 a Memo was filed by the petitioner's Counsel stating that he was leaving for Bangalore and requested the matter to be posted after 'Sankranti' Festival, like wise the petitioners took several adjournments. Earlier on 23-02-2004, 15-03-2004, 20-03-2004, 27-03-2004 & 07-04-2004 the matter was adjourned on the request of the petitioners and sufficient opportunity was

given to them. On 07-04-2004 the right of cross examination of the petitioner was forfeited. The petitioners herein filed C.R.P.No.1508/2004 before the Hon'ble High Court of A.P, Hyderabad for staying all further proceedings in the above ARC. The Hon'ble High Court by an order dt.12-04-2004 in C.M.P.No.6775/2004 in C.R.P.No.1508/2004 granted interim stay of all further proceedings. O n 10-9-2004 the Hon'ble High Court of A.P. in C.M.P.11863/2004 in C.M.P.No.6775/2004 in C.R.P.No.1508/2004 vacated the interim orders. On 26-10-2004 the petitioners herein filed a Memo before the Hon'ble Arbitrator, praying for setting aside the order dated 7-04-2004 of forfeiting the cross-examination and the same was set aside by the Hon'ble Arbitrator and sufficient opportunity was given on 23-3-2005, 12-4-2005 & 23-04-2005 to the petitioners for cross-examination, but they failed to comply with the same. I deny that the Hon'ble Deputy Registrar did not give further dates as her presence was uncertain.

In reply to para 3 of the affidavit, it is submitted that on 12-4-2005 the Counsel for the petitioners filed a Memo stating that the petitioner No.1 expired on 06-0402005. Accordingly, the Hon'ble Authority allowed the Memo and granted time and posted the case to 23-04-2005 and again on 23-04-2005 the Counsel for the petitioner requested time and the case finally posted to 28-04-2005. On 28-04-2005 the witness was present and ready and the junior Counsel for the petitioners sought time stating that his Senior Counsel was out of station. Hence this Hon'ble Authority after granting sufficient opportunities to the petitioners for cross-examination of P.W.1 passed the order of forfeiting their rights"

It is clear from the said paragraphs that numerous opportunities were given to the petitioners, who failed to avail the same giving rise to the view that their endeavour was is only to drag on the matter. The fact, however remains that the father of the 1st petitioner expired on 6-4-2005 and the explanation given for their seeking adjournment on 23-4-2005 is a plausible explanation.

Sri S.Laxma Reddy, learned counsel for the petitioners submits that his clients are ready to cross-examine P.W.1 on any day fixed by this Court. Mr.Ashok Anand Kumar submits that his client is ready to be subjected to cross-examination on any day. Both the counsel agreed that the petitioners' counsel would cross-examine P.W.1 on 22-06-2005 at 10-30 a.m. in the office of the Arbitrator.

It is made clear that in case the petitioners fail to avail this opportunity to cross-examine P.W.1 on 22-06-2005, their right of cross-examination shall stand forfeited. Needless to state that if cross-examination of the witness (P.W.1) is not completed on 22-6-2005, it shall continue on a day to day basis on 23-6-2005 and

24-6-2005, if so required, without the matter being adjourned.

Sri Ashok Anand Kumar submits that ARC 222/02 stand posted to 18-6-2005 and undertakes to inform his clients of the order passed by this court. The proceedings before the respondent shall stand postponed to 22-6-2005 to enable the petitioners to cross-examine P.W.1. Needless to state that no notice is required to be issued to the parties in this regard since Sri S.Laxma Reddy also undertakes to inform his counter part of the date on which the case would be taken up before the Arbitrator as ordered by this Court

The writ petition is accordingly disposed of.

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15-6-2005

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To:

1 The Deputy Registrar of Cooperative Societies/Arbitrator Vasavi Cooperative Urban Bank Limited, Hyderabad.
2 The Managing Director, Vasavi Cooperative Urban Bank Ltd., bearing Registration No.T.A.1186, office at 16-2-705/9/11, Malakpet,
Hyderabad rep.,

3. Two C.Cs. to the G.P. for Cooperation, High Court Buildings, Hyderabad

4. Two C.D copies